

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

June 27, 2008

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No. 07-40995  
Summary Calendar

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Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ARMANDO LINARES-HERNANDEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
No. 2:07-CR-324-1

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Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:\*

Armando Linares-Hernandez appeals his sentence for unlawful presence in the United States following removal. He asserts that the district court erred by imposing a 16-level enhancement based on his conviction of burglary of a hab-

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

itation under § 30.02(a)(1) of the Texas Penal Code. Although he recognizes our precedent that this offense is a crime of violence for purposes of U.S.S.G. § 2L1.2, he argues that *James v. United States*, 127 S. Ct. 1586, 1599-1600 (2007), overrules it.

His argument is unpersuasive. In *United States v. Gomez-Guerra*, 485 F.3d 301, 303 n.1 (5th Cir.), cert. denied, 128 S. Ct. 156 (2007), we noted that *James* pertains only to a residual provision of 18 U.S.C. § 924(e)(2)(B)(i) that is absent from § 2L1.2. Consequently, *James* is not dispositive. Because we have held that an offense under § 30.02(a)(1) constitutes a crime of violence for purposes of § 2L1.2, the district court did not err in applying the enhancement. See *Gomez-Guerra*, 485 F.3d at 304 & n.3; *United States v. Garcia-Mendez*, 420 F.3d 454, 456-57 (5th Cir. 2005).

The judgment is AFFIRMED.